WEB COPY

BAIL SLIP

CRIMINAL APPEAL NO.42/99

Palanisamy and Chinnakannan the appellants/ Accused 1 and 2 were directed to be released on bail by orders of this Court dated 11.12.2001 and made in Crl.Misc.Petition No.7864/2001 in Criminal Appeal No.42/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.07.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 42 OF 1999

1) Palanisamy
2) Chinnakannan .. Appellants/ Accused

- Vs -

State of Tamil Nadu
rep. by Inspector of Police
Dhali Police Station. .. Respondent/ Complainant

Appeal preferred against the conviction and sentence passed by the learned II Addl. Sessions Judge, Coimbatore, made in S.C. No. 84 of 1996 dated 22.11.96 as stated therein.

For Appellant : Mr. T.R.Ravi, for
M/s. T.Ananthi & S.Parthasarathy

For Respondent : Mr. V.M.R.Rajendran, APP

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

This appeal has been brought forth by the appellants, who are two in number, who stood charged before the trial court. A-1 and A-2 were charged under Sections 302 read with 34, 392 (I) read with 34 and 201 (I) IPC and they were found guilty as per the charges and while awarding life imprisonment under the first charge, they were sentenced to five years rigourous imprisonment and three years rigourous imprisonment under the second and third charges respectively. A-1 and A-2 each were directed to pay a

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

fine of Rs.1,000/= under charge No. 2 and Rs.1,000/= each under charge No.3 and in default to undergo one year rigourous imprisonment under each charge. The appellants have brought forth this appeal challenging the said conviction and sentence.

2. The short facts necessary for the disposal of this appeal are as follows :-

P.W.1 is the adoptive father of the deceased, Kalaiarasi, aged twelve years. P.W.4 is the adoptive mother. The accused belong to the same village. P.W.1 had a first wife and she was living with her two children separately. P.W.1 and P.W.3, the village nattami, used to do panchayat in the village. While doing so, there was a dispute by one Magudeeswari with others. The panchayat came to a decision and the same was adumbrated to which course the said Magudeeswari was not amenable and, hence, it was informed that she should not come for panchayat thereafter. Shortly thereafter there was a temple festival for which P.W.1 and others went for collection to Magudeeswari, but she refused to make any payment. A day prior to the date of occurrence (i.e.) on 16.6.94 there was a quarrel between P.W.4 and the said Magudeeswari and her family members. When P.W.1 interfered she slapped him with a chappal. He was prepared to give a complaint, but he withdrew the same.

3. On 13.6.94, as usual the deceased Kalaiarasi went to school. P.W.1 was in the house. During noon hours she returned home telling that half a day was declared as holiday and she started playing in the back side of the house. P.W.1 and others went inside the village doing some chorus in view of the village matters. At about 2.30 p.m., P.W.4 returned home and found the deceased Kalaiarasi missing and she sent word to P.W.1, who was in the temple. On coming to know about the missing of the deceased Kalaiarasi, P.W.1 also returned home at 5.00 p.m. At about that time P.W.s 1 and 4 were informed that there is a crowd gathered nearby in the village field. When they went there they saw the dead body of Kalaiarasi on which thorny bushes were placed. On seeing the same, P.W.1 rushed to the Dhali police station, where the head constable, P.W.9 was on duty. P.W.1 launched a complaint, which stands marked as Ex.P-1 on the strength of which a case came to be registered in crime No.131/94 under Section 302 IPC. The printed first information report, Ex.P-8 was sent to court immediately. P.W.10, the Inspector of Police was also informed.

4. On receipt of the copy of the printed first information report, P.W.10, the Inspector of Police took up investigation and proceeded to the spot the next morning. He made an observation of the scene of occurrence in the presence of two witnesses and prepared a mahazar, Ex.P-3 and drew a rough sketch, Ex.P-9. He recovered a petticoat and chappal from the scene of occurrence under a mahazar. The dead body and the scene of occurrence was caused to be photographed through the photographer, P.W.6. M.O.s 5 and 6 series are the photographs and negatives. He conducted

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

inquest over the dead body of the deceased in the presence of witnesses and panchayatadars and prepared inquest report, Ex.P-10. After inquest, he sent the dead body along with a requisition to the doctor for conducting autopsy.

5. On receipt of the requisition, P.W.7, the Assistant Surgeon attached to the Government Hospital, Udumalpet, conducted autopsy on the dead body of the deceased Kalaiarasi and found the following :-

> "Brown, dry patchment like bruise one on the right side of the thyroid cartilage and slightly above 3 cm x 2 cm and three marks on the left side, slightly lower and oblique downwards one below the other (i.e.) 3 x 2 cm each.
> Few cresentric marks present on lower aspect of lower jaw. No fracture ribs. Head and face in form. Eyelids opened and congested. Conjuctiva present. Tongue inside swollen and bruised. Jaws closed."

The doctor issued Ex.P-7, post-mortem certificate, where he has categorically stated that the deceased would appear to have died due to asphyxia caused by strangulation and that death would have occurred about 20 to 25 hours prior to autopsy.

6. P.W.10, continuing with his investigation, examined P.W.2 on 19.6.94 and recorded his statement. The accused were arrested by the investigating officer on 19.6.94. At that time, A-1 came forward to give a confessional statement, which was recorded in the presence of witnesses and following the same M.O.1, one pair of ear studs was recovered under a mahazar, Ex.P-6. The material objects were sent to court. On completion of investigation, the final report was filed against the appellants, the case was committed to the Court of Sessions, necessary charges were framed and the accused were tried.

7. In order to substantiate the charges levelled against the accused, the prosecution relied on the evidence of eleven witnesses and marked thirteen exhibits and ten material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances found in the evidence of the prosecution witnesses. It was a flat denial on the part of the accused at that time. No defence witness was examined. The trial court, after hearing the arguments advanced and on scrutiny of the materials, found both the accused guilty as per the charges and awarded the punishment referred to above, which is being challenged by the appellants in this appeal.

8. Learned counsel appearing for the appellant inter alia made the following submissions. In the instant case, the prosecution neither came forward nor proved any motive for these appellants to commit the crime. Even in the earliest document,

https://hcservices.ecourts.gov.in/hcservices/

the complaint, Ex.P-1, P.W.1 has not even whispered anything about the accused but he would say that they were found sitting in the pial. The prosecution relied on the evidence of P.W.2 as he was the sole witness to the occurrence. It is pertinent to point out that the occurrence took place on 13.6.94 and the complaint was given that evening itself. Though P.W.2 belonged to the same village, he has not come forward to speak about the fact that he witnessed the occurrence to anybody for a period of five days. He was examined only on 19.6.94. The only strong circumstance which would improbabilise the evidence of P.W.2 was that the investigation officer in his evidence has categorically deposed to the effect that P.W.2 at the time of recording of the statement under Section 161 Cr.P.C. never stated that either he saw A-1 catching hold or holding the deceased or A-2 throttling the neck of the deceased and from this it would be quite clear that P.W.2 could not have seen the occurrence at all. Thus he was a witness introduced to suit the case of the prosecution since the prosecution lacked evidence even at that stage. Yet another circumstance which the lower court relied on was the alleged confessional statement given by A-1 and the pursuant recovery of the gold ear studs. The learned counsel would further add that this is nothing but planted evidence on the side of the prosecution. Even from the evidence of the recovery witnesses it would be clear that those two small gold ear studs were recovered from running water, which cannot but be a falsity. In the circumstances, the court should not have believed the evidence of the recovery witnesses. Apart from these two parts of evidence, this was a case where the prosecution was not lacking in evidence, but had no evidence at all. On the above evidence put forth by the prosecution, the trial court has found both the appellants guilty, which cannot be sustained and, therefore, the appellants are entitled for an acquittal in view of the doubts cast on the prosecution case.

9. We have heard the learned Addl. Public Prosecutor appearing for the State on the above contentions. We have also perused the recorded evidence, both oral and documentary.

10. It is not in controversy that the body of the child, Kalaiarasi, aged twelve years, following the inquest conducted by the investigating officer was subjected to post-mortem by the doctor, P.W.7, who has given the post-mortem certificate, Ex.P-7, where he has given his opinion that the girl died of asphyxia due to throttling about 20 to 25 hours prior to autopsy. Not only the medical evidence was available for the prosecution but also the appellants before this Court never questioned the said fact that Kalaiarasi died due to throttling either before the trial court or before this Court. Hence, this Court has no difficulty in holding that the deceased Kalaiarasi died of asphyxia due to throttling.

11. Now the question that immediately arises for consideration is whether the prosecution has proved the nexus of the accused with the crime in question. This Court, on scrutiny of the materials available and the evidence adduced before the

https://hcservices.ecourts.gov.in/hcservices/

trial court, both oral and documentary, has to give an answer in the negative. The prosecution in order to prove the case, though relied on number of witnesses, heavily relied on the evidence of P.W.2, which according to the prosecution is the direct evidence. The occurrence has taken place, as per the prosecution case, on 13.6.94, but P.W.2, who is also of the same village, who according to him witnessed the occurrence at about 2.00 p.m., has not whispered a word to anybody for a period of five days about the occurrence till he was examined by the investigating officer on 19.6.94. Learned counsel for the State would submit that not even one point has been raised at the time of cross-examination of the witness as to why there was a delayed examination of the witness by the investigating officer. True it is that this Court has to necessarily take into consideration the argument of the Addl. Public Prosecutor about the absence of any suggestion to the investigating officer as to why this witness was not examined without delay, but in the instant case, the other circumstance what is available for the defence is that at the time of cross-examination the investigating officer has categorically admitted that this witness, P.W.2, at the time of recording of his statement under Section 161 Cr.P.C., has not spoken to the fact that either A-1 was holding the child or A-2 was throttling her neck. In such circumstances, even in the statement of P.W.2 recorded at the time of investigation by the investigating officer on 19.6.94 he has not spoken to about the acts of A-1 and A-2 at that time and that the present version in court by P.W.2 is a developed one. The earliest occasion for P.W.2 to speak about the complicity of the accused was on 19.6.94, but even that day when the investigating officer recorded the statement, P.W.2 has not whispered so. In such circumstances it would be highly unsafe to place reliance on the evidence of P.W.2, whose evidence is not corroborated by anybody and the same is suffering from doubts also.

12. The other part of the evidence relied on by the prosecution was the recovery of the gold ear studs alleged to have been recovered on the confessional statement given by A-1. This part of the evidence has got to be rejected on two grounds. Firstly, no where in Ex.P-1, complaint, missing of gold ear studs was referred to by P.W.1. Secondly, as rightly pointed out by the learned counsel for the appellant, though witnesses were examined for the recovery of the studs when they were recovered from running water, the circumstances surrounding the recovery itself would highly improbabilise the recovery, taking into consideration the small piece of the studs, recovered from running water. It will not be reasonable for any prudent man in the ordinary course to accept such a theory that the studs were recovered from running water. Hence, the evidence as regards the recovery part put forth by the prosecution has also got to be rejected.

13. This Court is not able to accept the evidence of P.W.2 for the reasons stated above and on the recovery of the studs also the prosecution had no further evidence to offer. In the circumstances, the benefit of doubt should have been given to the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

appellants, which the trial court has failed to do so and, hence, and this Court applying the same is of the considered opinion that the prosecution has not proved its case beyond reasonable doubt.

14. In the result, the criminal appeal is allowed. The conviction and sentence awarded by the trial court are set aside and the appellants are acquitted of all the charges framed against them. It is reported that the appellants are on bail. Bail bonds executed by them shall stand cancelled. Fine amounts, if any, paid by them will also be refunded.

GLN

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1) The II Addl. Sessions Judge, Coimbatore.
2) -Do- Thro' The Principal Sessions Judge, Coimbatore.
3) The Judicial Magistrate, Coimbatore.
4) The Chief Judicial Magistrate, Coimbatore.
5) The District Collector, Coimbatore.
6) The Director General of Police, Chennai.
7) The Public Prosecutor, High Court, Madras.
8) The Superintendent of Central Prison, Coimbatore.
9) The Inspector of Police, Dhali Police Station, Coimbatore.

+ 1 cc to M/S T.Ananthi, Advocate SR 27959

CRL. A. NO. 42 OF 1999

RR(CO)
SR/11.7.2005

https://hcservices.ecourts.gov.in/hcservices/